

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA-10-0034

STATE OF MONTANA,

Plaintiff and Appellee

v.

BRYCE EVERETT PETERSON,

Defendant and Appellant.

FILED

FEB 12 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA**MOTION FOR APPOINTMENT OF APPELLATE COUNSEL
AND MOTION FOR EXTENSION OF TIME TO FILE OPENING BRIEF**

I, Bryce Peterson, Defendant and Appellant, respectfully request this Court issue an Order appointing the Appellate Defender Office (Appellate Defender) to represent me in this appeal and granting Appellant's motion for an extension of time of thirty days from the date the Appellate Defender enters a Notice of Appearance or, in the alternative, from the date this Order is rescinded, in which to prepare and file the opening brief in this matter. In support of this motion, I submit the following argument and attached affidavit.

ARGUMENT

This Court may order the Appellate Defender to assign counsel for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration if the person is financially unable to retain private counsel. Mont. Code Ann. § 47-1-104(4). A person is indigent for purposes of the appointment of counsel if

(a) the applicant's gross household income, as defined in 15-30-171, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the federal register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

Mont. Code Ann. § 47-1-111(4).

Montana Code Annotated § 47-1-111(1) provides:

(a) Beginning July 1, 2006, when a court orders the office to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately notify the court so that the court's order may be rescinded.

(c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court's order requiring the assignment is rescinded.

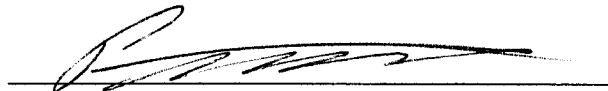
I was either convicted of a felony or a misdemeanor for which incarceration was a possibility. I am financially unable to afford to retain private counsel to assist me with this appeal. I believe I meet the eligibility requirements for the appointment of counsel. Therefore, I request the Court appoint the Appellate Defender to represent me in this matter. I further request the Court grant me an additional thirty days from the date that the Appellate Defender enters a notice of

appearance in which to file my opening brief. Should the Appellate Defender conclude I am not eligible for their services, I request the Court grant me thirty days from the date of the Order rescinding their appointment in which to file my opening brief.

CONCLUSION

Based on the foregoing, the Court should appoint the Appellate Defender Office to represent me in this appeal and grant me an additional thirty days from the date the Appellate Defender Office enters its notice of appearance or thirty days from the date of the order rescinding the Court's appointment order in which to prepare and file my opening brief.

Respectfully submitted this 11th day of February, 2010.

A handwritten signature in black ink, appearing to read "Bryce Peterson", written over a horizontal line.

Bryce Peterson

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing

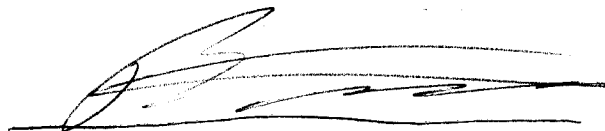
Motion to Affidavit in Support to be mailed to:

STEVE BULLOCK
Montana Attorney General
MARK MATTIOLI
Assistant Attorney General
P.O. Box 201401
Helena, MT 59620-1401

APPELLATE DEFENDER OFFICE
P.O. Box 200145
Helena, MT 59620-0145

GEORGE CORN
Ravalli County Attorney
205 Bedford St. - Suite C
Hamilton, Mt. 59840

DATED: February 11th, 2010



Bryce Peterson

STATE OF MONTANA)

: SS.

County of Toole)

I, Bryce Peterson, being first duly sworn upon my oath, depose and state as follows:

1. I am the Defendant and Appellant in the above-entitled matter.
2. I would like the Appellate Defender Office appointed to represent me in this appeal.
3. I cannot afford to retain private counsel and I believe that I meet the eligibility requirements for a court-appointed attorney.
4. I will quickly return my indigency paperwork to the Appellate Defender Office so that they may determine whether I am eligible for their services.

Leid Rulall
WITNESS

Bryce Peterson
OR Subscribed and sworn to before me this
____ day of _____, ____.

Notary Public for the State of Montana
Residing at _____
My commission expires _____

